

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

DELBERT GLEN ROGERS,  
Institutional ID No. 02634254,

Plaintiff,

v.

JOHN COCHRAN, *et al.*,

Defendants.

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CIVIL ACTION NO. 5:20-CV-185-M-BQ

**ORDER ACCEPTING THE FINDINGS, CONCLUSIONS, AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. ECF No. 24. Plaintiff Delbert Glen Rogers filed a document titled “EXHIBITS FINDING, CONCLUSIONS, AND RECOMMEND OF THE UNITED STATES MAGISTRATE JUDGE [sic all]” on May 4, 2021, which falls within the time frame for raising objections. ECF No. 25; *see* 28 U.S.C. § 636(b)(1) (2017); Fed. R. Civ. P. 72(b). The purported exhibits, however, do not contain specific written objections to a finding or recommendation, and instead merely describe possible adverse side effects from two prescription drugs: Metformin and Cymbalta. ECF No. 25. Liberally construing the document as an objection, the District Court has made a *de novo* review of the relevant portions of the proposed findings and recommendation. The objections are overruled. Accordingly, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, and Plaintiff’s Complaint is **DISMISSED WITH PREJUDICE** for failure to state a claim in accordance with 28 U.S.C. § 1915(e)(2)(B). ECF No. 1.

The Court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). In support of this certification, the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and Recommendation. *See Baugh v. Taylor*, 117 F.3d 197, 202 & n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).<sup>1</sup> In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; Fed. R. App. P. 24(a)(5).

**SO ORDERED** this 10th day of May, 2021.



BARBARA M. G. LYNN  
CHIEF JUDGE

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<sup>1</sup> Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order. A timely notice of appeal must be filed even if the district court certifies an appeal as not taken in good faith.